

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICKY RENEE SANDERS,

Petitioner,

vs.

JAMES E. TILTON, Warden,

Respondent.

No. C 08-2485 PJH (PR)

**ORDER TO SHOW CAUSE;  
GRANT OF LEAVE TO  
PROCEED IN FORMA  
PAUPERIS**

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

Venue is proper because the conviction was obtained in Alameda County, which is in this district. See 28 U.S.C. § 2241(d).

**BACKGROUND**

An Alameda County jury found petitioner guilty of one count of second degree commercial burglary, see Cal. Penal Code § 459; two counts of second degree robbery, see *id.* § 211; two counts of false imprisonment, see *id.* § 236; two counts of attempting to dissuade a witness, see *id.* § 136.1(b)(2); and one count of cutting a utility line, see *id.* § 591. The jury also found several enhancements true.

Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the California Supreme Court denied review. He also has filed state habeas petitions; all were denied.

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**DISCUSSION****A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)). "Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

**B. Legal Claims**

As grounds for federal habeas relief, petitioner asserts that: (1) His trial counsel was ineffective in advising him to admit a previous conviction; (2) trial counsel was ineffective in not moving to dismiss the charges against him arising from the robberies of the individual victims; (3) his appellate counsel was ineffective in not raising the claim that there was insufficient evidence of petitioner's specific intent to rob the individuals or falsely imprison them; and (4) his Sixth Amendment rights were violated when he was given consecutive sentences based on facts which were not tried to the jury and found beyond a reasonable doubt. These claims are sufficient to require a response.

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**CONCLUSION**

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2 1. Leave to proceed in forma pauperis (document number 3 on the docket) is  
3 **GRANTED.**

4 2. The clerk shall serve by regular mail a copy of this order and the petition and all  
5 attachments thereto on respondent and respondent's attorney, the Attorney General of the  
6 State of California. The clerk also shall serve a copy of this order on petitioner.

7 3. Respondent shall file with the court and serve on petitioner, within sixty days of  
8 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
9 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
10 granted. Respondent shall file with the answer and serve on petitioner a copy of all  
11 portions of the state trial record that have been transcribed previously and that are relevant  
12 to a determination of the issues presented by the petition.

13 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
14 the court and serving it on respondent within thirty days of his receipt of the answer.

15 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
16 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
17 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court  
18 and serve on respondent an opposition or statement of non-opposition within thirty days of  
19 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
20 within fifteen days of receipt of any opposition.

21 5. Petitioner is reminded that all communications with the court must be served on  
22 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
23 must keep the court informed of any change of address and must comply with the court's  
24 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
25 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

26 **IT IS SO ORDERED.**

27 Dated: June 17, 2008.



PHYLLIS J. HAMILTON  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

RICKY RENEE SANDERS,

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Case Number: CV08-02485 PJH

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ricky Renee Sanders V-26524  
Central Valley MCCF  
B4-46  
P.O. Box 458  
McFarland, CA 93250

Dated: June 17, 2008



Richard W. Wieking, Clerk  
By: Nichole Heuerman, Deputy Clerk

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08-2485 PJH  
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